

## IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 16-0682

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

ORDER

SCOTT ALAN LEHRKAMP,

Defendant and Appellant.

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**FILE**

NOV 29 2016

*Ed Smith*  
CLERK OF THE SUPREME C  
STATE OF MONTANA

Self-represented Appellant Scott Alan Lehrkamp has filed a petition for an out-of-time appeal. He states that after he was convicted by a jury of felony assault with a weapon in December 2014, he discussed filing a timely appeal with his attorney, but that he then had many difficulties contacting her. He adds that that he “was under the impression that an appeal was filed,” and only realized several months later that his attorney did not pursue an appeal.

A review of this Court’s docket reveals that Lehrkamp presently has an appeal pending from a separate conviction that occurred after he was convicted of felony assault. Lehrkamp, by counsel, timely filed a notice of appeal on October 16, 2015, from his June 2015 jury conviction for felony possession of dangerous drugs and the District Court’s ensuing Judgment and Conviction. Although his conviction for felony assault occurred many months earlier than his conviction for drug possession, Lehrkamp did not until now complain about the absence of an appeal from his earlier conviction.

M. R. App. P. 4(6) allows this Court to grant an out-of-time appeal “under extraordinary circumstances amounting to a gross miscarriage of justice.” Further, the rule requires that a request for out-of-time appeal must be by verified petition supported by affidavits, records, and other evidence establishing the existence of the extraordinary circumstances claimed. Lehrkamp has not complied with the rule. Moreover, it is

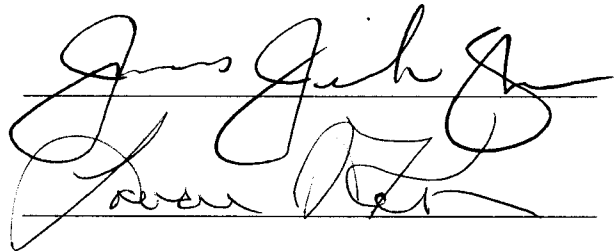
evident that while Lehrkamp timely exercised his right of appeal from his 2015 drug possession conviction, he waited almost two full years from the date of his 2014 felony assault conviction to complain about the failure of his counsel to file an appeal in that case. In light of this unexplained delay, we conclude that Lehrkamp has failed to establish the requisite extraordinary circumstances justifying an out-of-time appeal. Accordingly,

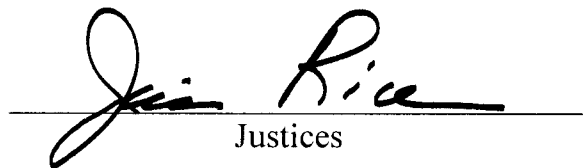
IT IS ORDERED that Lehrkamp's petition for an out-of-time appeal is DENIED.

The Clerk is directed to provide a copy of this Order to counsel of record and to Scott Lehrkamp personally.

DATED this 29<sup>th</sup> day of November, 2016.

  
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Patricia Cotter

  
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James G. Smith

  
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John Rice  
Justices